



Department of Environmental Protection

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

October 3, 2002

Mr. Richard E. Bonner
U. S. Army Corps of Engineers
Post Office Box 4970
Jacksonville, Florida 32232-0019

Permit Modification No.: 0176979-003-JC
Permit No.: 0176979-001-JC, Collier County
Gulf Intracoastal Waterway Maintenance Dredging, Naples to Gordon Pass

Dear Mr. Bonner:

Your request to modify this permit has been received and reviewed by Department staff. The proposed permit modification is to extend the northern limit of the dredged material disposal area 300 feet northward to the south jetty of Gordon Pass. Also, given your request for a variance to establish an expanded mixing zone (File No. 0176979-002-EV), the turbidity monitoring requirements would be revised to match the new mixing zone (if the variance is granted).

The main purpose of this permit is to dredge the federal channel, which connects the Gulf of Mexico with Dollar Bay of the Gordon River. Gordon Pass (Cut 1) is approximately 1.65 miles long. Geotechnical studies, provided with the application, indicate that the shoaled materials within the Pass are of beach quality. The material dredged from the Pass and channel will be placed on the beach south of the Pass on Keewaydin Island. The current permit authorizes placement of the dredged material to begin 300 feet south of the jetty extending approximately 4,000 feet south on Keewaydin Island.

This project is related to two other projects on the north end of Keewaydin Island. The Department issued Permit No. 0183727-001-EI to the Keewaydin Island Limited Partnership for sand tightening of the southern jetty at Gordon Pass. This project, which is currently under construction, is being done to reduce the sand losses back into the inlet from the beaches at the north end of the island. The Department also is preparing an Intent to Issue a permit (No. 0185549-001-JC) to Keewaydin Island Limited Partnership to construct three T-groins immediately south of the inlet. The proposed T-groins, combined with the beach fill project, is being proposed to reduce the erosional stress and create a more stable beach condition within and adjacent to the project area. This area has been subjected to erosion over the past 40 years, which has been offset with periodic nourishment from the dredging of Gordon Pass.

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Bureau of Beaches and Wetland Resources staff have recommended this modification to the permit to fill the proposed T-groins and the area between the jetty and the T-groins with the dredged material. The dredged material has been placed some distance south of the jetty in the past to reduce sand losses back into the inlet. These losses will be reduced by the jetty sand tightening project allowing for material to be placed immediately south of the inlet.

The project description shall be revised as follows (~~striketroughs~~ are deletions, underlines are additions):

PROJECT DESCRIPTION:

The project is to dredge approximately 150,000 cubic yards of beach compatible material from approximately 4.5 miles of the Federal Channel in the Gulf Intracoastal Waterway (GIWW). Dredging will be to a depth of -12 feet Mean Lower Low Water (MLLW) in Cut 1 (within Gordon Pass) and to a depth of -10 feet MLLW from Cut 2 through Cut 15 (within the GIWW). The shoal at the intersection of Cut 2 and Cut 3 will not be dredged because the materials have been determined not to be beach compatible. The material will be placed on the beach ~~approximately 300 feet~~ immediately south of Gordon Pass extending approximately 4,000 feet south on Keewaydin Island.

A portion of the monitoring requirements shall be revised as follows (underlines are additions):

Beach Disposal Site Location:

Background: At the surface and 1 meter above the bottom, approximately 150 meters offshore and at least 300 meters upcurrent from the discharge point and clearly outside of the influence of any turbidity generated by this project.

Compliance (if Variance No. 0176979-002-EV is **NOT** granted): At the surface and 1 meter above the bottom, approximately 150 meters offshore and no more than 150 meters downcurrent from the discharge point within the densest portion of any visible turbidity plume.

Compliance (if Variance No. 0176979-002-EV is granted): At the surface and 1 meter above the bottom, approximately 400 meters offshore and no more than 1,500 meters downcurrent from the discharge point within the densest portion of any visible turbidity plume.

After thorough review the staff has determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean-high water or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Furthermore, staff finds that the proposed modification is not expected to adversely affect water quality and is expected to be clearly in the public interest. Since the proposed modification is not expected to result in any adverse

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environmental impact or water quality degradation the **permit is hereby modified** as requested. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter of approval does not alter the August 20, 2012 expiration date, Specific or General Conditions, or other monitoring requirements of the permit. This letter and accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) in accordance with Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with rule 28-106.205, F.A.C.

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In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(1), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57, F.S.

In accordance with rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301, F.A.C. Under sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

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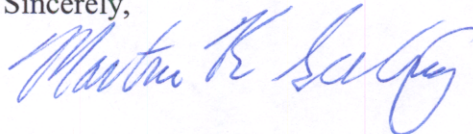
This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 487-4471, ext. 104.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches and Wetland Resources

MKS/dd

cc:

Jon Staiger, Ph.D., City of Naples, 735 Eight Street South, Naples, Florida 34102
Mr. E. Daniel Spina, Save the Bays Association, Inc., P.O. Box 1593, Naples, Florida 34103-4347
Lucy Blair, DEP, South District Office, Fort Myers
Jennie Cowart, DEP, South District Office, Fort Myers
Mike Shirley, FDEP, Rookery Bay Aquatic Preserve
Robbin Trindell, FWCC, BPSM

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FWC, Division of Law Enforcement

BBWR Permit Information Center

BBWR File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Monica H. House 10/3/02
Deputy Clerk Date